

**ABU DONZO**, Appellant, v. **DORIS TATE**, Appellee.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,  
MONTSERRADO COUNTY.

Heard: May 21, 1998. Decided: August 5, 1998.

1. A plaintiff in an ejectment suit must always prove and recover the property on the strength of his title and not on the weakness of the defendant's title.
2. The dismissal of a defendant's pleadings, restricting the defendant to a bare denial of the facts alleged by the plaintiff, does not deprive the defendant of the right to cross examine the plaintiff's witnesses as to proof, and does not shift the burden of proof.
3. The grantor of property shall warrant and defend the subject property in litigation forever against the lawful claims and demands of all persons.
4. The priority of claim to title is a material element in an action of ejectment, and plaintiff in an action of ejectment is required to furnish clear and convincing proof of title.
5. In an ejectment suit the primary objective is to test the strength of the title of the parties, and to award possession of such property in litigation to a party whose claim of title is so strong as to effectively negate his adversary's right of recovery.
6. Nothing tends greater to disturb tranquility, to hinder industry, and to improve communities than the insecurity of property, personal or real, to prevent which, courts of justice are established.
7. A person cannot be deprived of his property unless by a judgment of his peers who constitute a jury.
8. It is the law, procedure and practice hoary with age in our jurisdiction, that a judge cannot review the judicial acts of another judge of concurrent jurisdiction, except by the court of last resort, the Supreme Court.
9. A circuit court judge cannot grant a motion for summary judgment after the case has been ruled to trial by another circuit court judge.

Doris Tate, appellee herein, filed an action of ejectment in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, before His Honour M. Wilkins Wright, judge presiding during the March Term, A. D. 1997, against defendant/appellant, Abu F. Donzo. Appellee alleged in her complaint that she was the lawful owner of a piece of land located in Gardnersville, on which appellant had commenced the construction of a building, thereby depriving her of the use of her lawful property. She prayed that she be compensated for the damages she allegedly suffered, that appellant be ousted, evicted and ejected from the property, and that the court place her in possession of the land.

Appellant filed a seven-count answer to appellee's complaint and attached thereto photocopies of three deeds, some of which he considered as original deeds, for his property. Like the deed of the appellee, the deeds presented by appellant had been probated and registered according to law. The trial judge, His Honour M. Wilkins Wright, disposed of the law issues, dismissing defendant/appellants' answer because of what was regarded as the defectiveness of his deeds, and placed the appellant on bare denial of the facts alleged in the complaint. The judge therefore ruled the case to trial, only on the complaint and the reply.

On the 10th day of May, A. D., 1997, appellee herein filed a seven-count motion for summary judgment contending that there were no genuine issues, as to material facts, to warrant a trial, following the disposition of the law issues. Appellant's request to spread his resistance to the motion on the records of the trial court was denied.

On the 22nd day of May, A. D. 1997, Mr. Joe Young, defendant's grantor, filed an eight-count motion to intervene, along with an answer to which he attached a deed from the Republic of Liberia to James Sims and Alice Sims, dated March 28, 1960, and another deed from James Sims and Alice Sims to the intervenor in the ejectment action. The movant intervened as a party defendant to enable him to legally defend and protect his property.

Appellee then filed an eight-count resistance to the motion to intervene, indicating that the motion to intervene was not filed within a reasonable time and that the intervenor's rights and interest in the remaining three acres of land would not be affected by a determination of the ejectment case.

The trial judge denied the motion to intervene on the grounds that all of the deeds presented by the intervenor were all defective and therefore could not have legally passed title to any of the grantees.

On the 30th day of December, A. D. 1997, Judge C. Aimesa C. Reeves granted appellee's motion for summary judgment on the grounds that appellant's deeds were all defective, and that there was no genuine issue as to any material fact that would warrant a trial. Appellant excepted to the ruling and announced an appeal to the Honourable Supreme Court of Liberia.

The Supreme Court reversed the judgment of the lower court, holding firstly that the trial judge had invaded the province of the jury in dismissing the appellant's answer and ruling him to a bare denial. The Court noted that the action, being one of ejectment, necessarily involved mixed issues of law and facts, and that therefore the appellant's answer should have been ruled to trial so as to enable the jury, as triers of the facts, to determine the weight and credibility of the written instruments annexed to the answer.

The Court also held that it was error for the trial judge to grant the appellee's motion for summary judgment, noting that in an ejectment action the plaintiff must always prove and recover property on the strength of his title and not on the weakness of the defendant's title. The Court opined that the records showed that by the granting of summary judgment, without the taking of evidence, the trial court had permitted the appellee to recover on the weakness of the appellant's title rather than on the strength of her title. It therefore concluded that the trial court had committed reversible error in that respect.

Moreover, the Court said, the granting of summary judgment by the trial court deprived the appellant of the right to cross examine the appellee and her witnesses, noting that the dismissal of the appellant's pleadings and restricting him to a bare denial of the allegations in the complaint did not deprive the appellant of the right to cross the appellee and her witnesses as to proof, and also did not shift the burden of proof from the appellee.

On the trial court's denial of the intervenor's motion to intervene to protect his right to his property and to defend the rights of his grantee, the Court held that the facts clearly showed that not only did the intervenor have a right to protect its property as any judgment of the trial court was likely to affect the intervenor's interest, but also that under the transfer deed, which constituted a contract between the grantor and

the grantee, the intervenor had warranted and had an obligation to protect the grantee right against all legal claims made against the transferred property.

The Court noted that because of the many errors made, the judgment of the trial court warranted reversal. It therefore reversed the judgment and ordered that the case be remanded for a new trial beginning with the disposition of the law issues, and further, that the intervenor be permitted to intervene.

George S. B. Tulay appeared for appellant. Benedict F. Sannoh appeared for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The certified records transmitted to this Court reveal that President William V. S. Tubman, of the Republic of Liberia, executed a Public Land Sale Deed on March 28, 1960 in favour of James Sims and Alice Sims, containing sixteen (16) acres of land, situated and lying in the settlement of Gardnersville, Montserrado County, bearing lot number N/N. The said deed was probated according to law on July 12, 1962, and registered in Volume 88-H, Page 14, without any objection from any person.

On the 13th day of March A. D. 1966, President Tubman executed another deed in favour of Doris Tate for a piece of land containing two acres, situated and lying in Gibson's Farm Area, Gardnersville, Somalia Drive (Freeway), in Montserrado County, bearing lot number 6. This deed was duly probated on May 16, 1966, and registered in Volume 90HF, pages 350-351 without any caveat filed against its probation and registration.

The records also disclose that James Sims and Alice Sims executed a transfer deed on April 16, 1982 in favour of Joe Young, containing four acres of land out of their sixteen acres of land deeded to them in 1960 by President Tubman. The deed was probated on April 8, 1987 and registered in Volume 496, pages 71-73.

On the 14th day of November A. D.1995, Joe Young also executed a deed in favour of Kaba Kunati for a piece of land containing one acre out of his four acres of land that he acquired from James Sims and Alice Sims in 1982. On the 18 th day of November A. D. 1996, Kaba Kunati sold his one acre of land, acquired from Joe Young, to Abu F. Donzo, appellant herein, and said deed was probated on February 14,1997 and registered in Volume 20-97, pages 40-42, without any objection thereto.

On the 20th day of February A. D. 1997, Doris Tate, appellee instituted an action of ejectment against Abu F. Donzo in the Civil Law Court, Sixth Judicial Circuit, Montserrat County, during its March Term, A. D. 1997, presided over by His Honour M. Wilkins Wright, then resident circuit judge. Appellee alleged in her complaint that she was the lawful owner of the property, referred to herein, upon which appellant had commenced constructing a building. She annexed to the complaint a copy of her public land sale deed, acquired from the Republic in 1966.

She also stated in her complaint that appellant had illegally entered upon her property without her prior consent and permission and commenced constructing a building thereon, thereby depriving her the use of her lawful property. She further alleged that she had been damaged as a result of the inconvenience and deprivation attendant to the appellant's wilful, callous and wanton conduct. Appellee prayed the trial court to oust, evict and eject the appellant from her property, and to place her in possession thereof, as well as award her general damages in an amount sufficient enough to compensate her for the damages she had sustained.

On the 28th day of February A. D. 1997, appellant filed a seven-count answer to appellee's complaint and attached thereto photocopies of three deeds: a deed from James Sim and Alice Sims to Joe Young, a deed from Joe Young to Kaba Kunati, and a deed from Kaba Kunati to him. We deem counts five and six of said answer relevant for the determination of this case.

Appellant alleged in count five of his answer that he had legally, lawfully and rightfully entered upon the subject property on which he had commenced construction of a building by virtue of a legal and honourable purchase of said land from one Kaba Kunati on November 18, 1996. In the said count, he traced his chain of title to the subject property as herein mentioned above. In count six of his answer, appellant contended that he had neglected, failed and refused to vacate said premises on which he was constructing his building on ground that he was the rightful owner thereof. Appellant also prayed the trial court to sustain his answer and dismiss appellee's complaint.

On the 14<sup>th</sup> day of March A. D. 1997, appellee filed a seventeen-count reply, counts 9, 10, 13 and 14 of which this Court considers worthy for the determination of this case.

Appellee contended in count nine of her reply that the appellant had failed to establish his chain of title directly to the Republic because no linkage had been established between Mr. and Mrs. James Sims and the Republic of Liberia.

Appellee also alleged in count 10 of her reply that the transfer deed from James Sims and Alice Sims to Joe Young was defective, in that it was probated and registered five years beyond the statutory period of four (4) months. Hence, Joe Young's secondary deed was inferior to appellant's deed, duly probated and registered within statutory time.

In count 13 of the reply, appellee alleged that the transfer deed signed on November 16, 1995 by Joe Young to appellant's grantor, Kaba Kunati, was defective, in that it was probated and registered six (6) years before it was signed by Joe Young, as shown on its face, and indicating that although it was surveyed on November 9, 1995, it was not probated and registered until the 8th day of May A. D. 1998. Appellant contended that Joe Young's deed was defective, and as such, he could not legally transfer any title to appellant's grantor, Kaba Kunati.

Appellee contended in count 14 of her reply that there was a serious discrepancy in the description of the metes and bounds and the exact location of the property conveyed to appellee by Kaba Kunati, in that Joe Young had sold to Kaba Kunati only one acre of land but the deed probated by appellant indicated nine (9) acres of land from which he sold one to the appellant. Appellant maintained that the land which Kaba Kunati had allegedly sold to the appellee was not the same property sold to Kaba Kunati by Joe Young; thus, there was no continuous chain of title from the Republic to appellee.

On the 8<sup>th</sup> day of May A. D. 1997, the trial judge, His Honour M. Wilkins Wright, disposed of the law issues and dismissed appellant's answer due to the defectiveness of his deeds. He placed appellant on a bare denial and ruled the case to trial on the complaint and the reply. We shall address ourselves to the judge's ruling on the disposition of the law issues later in this opinion.

On the 10th day of May, A. D. 1997, appellee filed a seven count motion for summary judgment, contending that there was no genuine issue as to any material fact to warrant a trial following the disposition of the law issues and the dismissal of appellant's answer by the trial judge. Appellant's request to spread his resistance to the motion on the records of the trial court was denied by the trial judge.

On the 22<sup>d</sup> day of May, A. D. 1997, Joe Young, appellant's grantor, filed an eight-count motion to intervene, along with an answer. He attached thereto photocopies of two deeds, a deed from the Republic of Liberia to James Sims and Alice Sims dated March 28, 1960 and a deed from James Sims and Alice Sims to the Joe Young, intervenor in the ejectment action. Intervenor asked to intervene basically to enable him to legally defend and protect his property and the one acre of land he had sold to Kaba Kunati, who had in turn had sold to appellant. He asserted that appellee was claiming two acres of land in the area where intervenor's four acres of land were located. Intervenor also contended that his rights, interest and ownership to the three acres of land in the area will be adversely affected if he could not be made a party defendant in the ejectment action.

On the 28<sup>th</sup> day of May, A. D. 1997, appellant filed an eight count resistance to the motion to intervene She contended that said motion was not filed within a reasonable time, in that the law issue had been disposed of and the case ruled to trial on the complaint and reply. She also contended that the intervenor's rights and interests in the remaining three acres will not be affected by a judgment in the ejectment action on ground that the property claimed by intervenor was not located in the area where appellee's property was located. Appellee also maintained that intervenor has no legal or equitable interest in the property on the ground that it is legally owned by appellant, who is an existing party to the ejectment suit. Appellee contended that the Public Land Sale Deed of James Sims and Alice Sims, of 1960, and Joe Young's deed of 1982, from Mr. and Mrs. Sims, are all defective for not being probated and registered within the statutory period of four months.

The trial judge denied the motion to intervene on the 30<sup>th</sup> day of May A. D. 1997 for reasons that all of the deeds proffered by intervenor, including that of the Republic, in the linkage of appellant's title, were defective and therefore could not pass title to any of the grantees named therein, including appellant. The trial court also ruled that intervenor was not a party to this case and had no interest in the property. As such, it said, intervenor could not be affected or bound by a judgment of the trial court. Intervenor excepted to this ruling.

On the 30<sup>th</sup> day of December A. D. 1997, Judge C. Aimesa Reeves granted appellee's motion for summary judgment on grounds that the deeds proferted by appellant were defective and that there was no genuine issue as to any material fact that would warrant a trial. Appellant excepted to this ruling and announced an appeal to this Court on a nine-count bill of exceptions, counts 1, 2, 5, 7, and 8 of which this Court deems relevant for the determination of this case.

Appellant alleged in count 1 of the bill of exceptions that the trial judge committed a reversible error when he declared appellant's deeds defective and dismissed his answer, thereby placing appellant on a bare denial.

We would like to remark here that an ejectment suit involves issues of law and facts. Therefore, appellant's answer should have been ruled to trial so as to enable the jury, the trier of facts, to determine the weight and credibility of such written instruments as were annexed to the answer in the ejectment action. The trial judge therefore invaded the province of the jury when he determined the factual issues as to the weight and credibility of appellant's deeds, pleaded in his answer, without the aid of a trial jury in such cases made and provided by law. Hence, said ruling on the disposition of law issues is reversible.

Count two of appellant's bill of exceptions substantially alleges that the trial judge erred when he denied Joe Young's motion to intervene as a grantor of appellant, by virtue of a deed he acquired from James Sims and Alice Sims, who also acquired a Public Land Sale Deed from the Republic of Liberia in 1960. Appellant argued before this Court that Joe Young own four acres of land, one of which was sold to appellant in the area where appellee is claiming two acres of land.

In count 5 of the bill of exceptions, appellant alleged that the trial judge, Her Honor C. Aimesa Reeves, erred when she granted the motion for summary judgment growing out of the ejectment action which contained mixed issues of law and facts. By that action, appellant said, he was deprived of his property, in contravention of the Constitution of Liberia which guarantees a trial by jury in such cases made and provided. Appellant also argued before this Court that Judge Reeves erred when she granted said motion for summary judgment after the ejectment suit had been ruled by Judge Wright to trial by a jury, and asserted that the act of Judge Reeves was tantamount to reviewing and reversing the ruling of her colleague. We shall decide this issue later in this opinion.

Count 7 of the bill of exceptions alleged that the appellee had failed to prove and recover said property on the strength of her title, but the trial judge made appellee to recover said premises on the weakness of the appellant's title.

We are in agreement with appellant's assertion that a plaintiff in an ejectment suit must always prove and recover a property on the strength of his title, and not on the weakness of a defendant's title. *Cooper-King v. Cooper-Scott*, 15 LLR 390 (1963).



The records in this case did not establish that appellee proved and recovered the subject property on the strength of her title; rather, the records clearly show that she recovered on the weakness of appellant's title. Count 7 of appellant's bill of exception is hereby sustained.

In count 8 of appellant's bill of exceptions, he contended that the granting of the motion for summary judgment by the trial judge deprived him of the right to cross examine appellee and her witnesses as required by law in our jurisdiction. We observe from the records in this case that the motion for summary judgment was filed by appellee after the disposition of law issue and the case being ruled to trial by a jury. This Court held in the case, *Salami Brothers v. Wahaab*, 15 LLR.32 (1962), that the "dismissal of a defendant's pleadings restricting the defendant to a bare denial of the facts alleged by the plaintiff does not deprive the defendant of the right to cross examine as to proof, and does not shift the burden of proof." We are therefore in agreement with the appellant that the granting of the motion for summary judgment was a deprivation of his right to cross examine the plaintiff and her witnesses, and that the dismissal of his answer did not shift the burden of proof. Hence, count 8 of appellant's bill of exceptions is sustained.

Appellant argued before this Court that the trial judge erred in denying Joe Young's motion to intervene in the ejectment action as a grantor of appellant. He maintained that Joe Young should have been permitted to intervene to protect his three acres of land and Joe Young's property in the area where appellee was claiming two acres of land. Appellant also contended that Judge Reeves erred when she granted a motion for summary judgment after the case had been ruled to trial by her predecessor, Judge Wright, thereby reviewing and reversing the ruling of her colleague. He further maintained that the trial judge granting of the motion for summary judgment deprived him of his right to trial by a jury, in contravention of the Constitution of Liberia. Appellant therefore requested this Court to reverse the judgment of the lower court, remand the case for new trial by a jury and to allow Joe Young to be made a party to defend his property.

Appellee, in counter-argument, contended that the ruling denying the motion to intervene was proper, in that said motion was not timely filed and that intervenor had no legal or equitable interest in the property which he had sold to appellant in fee simple. Appellee also argued before this Court that the ruling of the trial judge granting the motion for summary judgment was proper and in harmony with law as there was no factual issue to warrant a full trial upon the dismissal of appellant's answer. Appellee maintained that appellant made no allegation in his pleadings that

the property claimed by appellee is not the same as that occupied by defendant, thereby impliedly admitting that appellee's deed did cover the property, subject of the ejectment action. Appellee therefore prayed this Court to confirm the judgment of the lower court. The facts and circumstances in this case present two issues germane to the determination of this case:

(1) Whether or not the trial judge committed a reversible error when she granted the motion for summary judgment after the case had been ruled to trial by her predecessor.

(2) Whether or not the ruling denying Joe Young's motion to intervene as a party defendant was proper and supported by law.

We shall decide these salient issues in the reverse order. As to the issue of Joe Young's intervention, appellant argued that the subject property in litigation is one of Joe Young's four acres of land sold to appellant and that Joe Young intervened to defend his remaining three acres of land in the area and the property of appellant. Counsel for appellee argued in support of the trial judge's ruling that the motion was filed untimely and that intervenor had no legal and equitable interest in the subject property after its sale to appellant in fee simple. During the arguments,, counsel for appellee answered a question from the Bench contending that it is not written in any deed that a grantor can defend and protect the interests and rights of a grantee.

This Court observes from the motion to intervene that the intervenor is the grantor of appellant and that he is also claiming his remaining three acres of land in the area where appellee is also claiming ownership of two acres of land. Intervenor is so situated as to be adversely affected by a judgment in the ejectment action or by a distribution or other disposition of the subject property by the trial court. Civil Procedure Law, Rev. Code 1: 5.61 (b) (c). With regards to the issue of intervenor's right and obligation to defend the property rights of appellant, a careful perusal of said deed clearly shows that the grantor shall warrant and defend the subject property in litigation forever against the lawful claims and demands of all persons, including the appellee herein. Hence, appellee's contention that such clause of warranty or obligation is absent in a deed is unfounded and not sustained. In *Davies v. Republic*, 14 LLR 248 (1960), this Court held that "contractually, the grantor is bound by perpetual obligation to defend the grantee's ownership of property transferred by deed; and the fact that the Republic of Liberia is one of the parties does not lessen the binding effect of the terms of the contract." We hold that acquisition of a property transferred by a deed is a legal contract between the grantor and the grantee

or subsequent grantees, and as such, a grantor, including this Republic, is bound by perpetual obligation to defend such grantees' ownership of property so transferred by a deed. The trial judge therefore committed a reversible error in denying Joe Young's motion to intervene for the reasons herein stated above.

We shall now decide the second and final issue in this case, which is whether or not the trial judge committed a reversible error when she granted the motion for summary judgment after the case had been ruled to trial by her predecessor.

We observe from the records in this case that Judge Wright ruled this case to trial by a jury before appellee filed her motion for summary judgment, which was subsequently granted by Judge Reeves, thereby dispensing with a jury trial. Appellant contended that the trial judge erred when she granted said motion after the case had been ruled by another circuit court judge to trial by jury, and that this was tantamount to reviewing and reversing her colleague. Appellee, on the other hand, stressed that said motion for summary judgment was properly granted and in harmony with law as there was no factual issue to warrant a trial upon the dismissal of appellant's answer.

Appellee claimed title to the property by virtue of a Public Land Sale Deed executed in 1966 from the Republic, and appellant claimed title to the subject property in litigation by a deed from Kaba Kunati, which chain of title was also derived from the Republic in 1960. This Court has held that priority of claim to title is a material element in an action of ejectment. A plaintiff in an ejectment action is required to furnish clear and convincing proof of title." *Duncan v. Perry*, 13 LLR (1960).

In this regards, both parties were required to establish their claim of title to the property, in that the primary object in ejectment suit is to test the strength of the titles of the parties, and to award possession of such property in litigation to a party whose claim of title is so strong as to effectively negate his adversary's right of recovery. Further, this Court held as far back as 1895 that "nothing tends greater to disturb tranquility, to hinder industry and improvements in communities, than the insecurity of property, personal or real, to prevent which courts of justice are established." *Reeves v. Hyder*, 1 LLR 271 (1895). Courts of justice are therefore established to prevent insecurity of property, personal or real, in a society. As such, a person cannot be deprived of his property unless by a judgment of his peers. Hence, the filing and granting of the motion for summary judgment was not necessary when both parties claimed title to the same property in litigation as there were factual issues that warranted a trial by jury to establish the true ownership of the property.

Further, we have been taken aback that the motion for summary judgment was filed and subsequently granted by Judge Reeves after her colleague had ruled the case to trial. It is the law, procedure and practice hoary with age in our jurisdiction that a judge cannot review the judicial acts of another judge of concurrent jurisdiction, except this Court of last resort. This Court has further held that " a judge cannot review the judicial acts of his peers; therefore, as in the case presented, a circuit court judge cannot grant a motion for summary judgement after the case has been ruled to trial by another circuit court judge." Dennis, et al. v. Philips, et al., 21 LLR 506 (1973). In the Dennis case, Judge Kandakai had disposed of the issues of law and ruled the case to trial by jury, but Judge Koroma thereafter granted a motion for summary judgement and awarded judgment as a matter of law. This Court held that Judge Koroma reviewed and interfered with the ruling of his colleague, and therefore reversed the judgment and remanded that case for a new trial. The facts in the Dennis case and the instant case are analogous. The judgment awarded appellee is therefore reversible.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the judgment of the lower court should be, and the same is hereby reversed, and the case is remanded for a new trial commencing with the disposition of the law issues. It is the further holding of this Court that Joe Young should be permitted to intervene as party defendant and that all deeds and other relevant documents relating to the subject property be submitted to the jury under the supervision of the trial judge presiding therein. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over this case and to proceed with the trial in keeping with this opinion. Costs are to await the final determination of this case. And it is hereby so ordered.

*Reversed and remanded for new trial.*